

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY, and
MONSANTO TECHNOLOGY LLC

Plaintiffs,

v.

E.I. DUPONT DE NEMOURS AND
COMPANY and PIONEER HI-BRED
INTERNATIONAL, INC.,

Defendants.

Case No. 4:09-cv-00686 (ERW)

MONSANTO'S MOTION FOR EXTENSION OF TIME

Plaintiffs, Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), respectfully move for a two-week extension of time, from Friday June 3, 2011 to and including Friday June 17, 2011, within which Monsanto shall complete its production pursuant to Defendants’ selection of five additional custodians. As indicated in the parties’ May 9, 2011 Joint Motion to Amend Deadlines, “there are a substantial number of documents to be reviewed for the five supplemental custodians designated by DuPont” and thus the “June 3, 2011 date was agreed to with the understanding that Monsanto may need to request additional time to complete the supplemental production.” (Dkt. 743.) Thus, both parties proceeded with the preliminary understanding that the June 3, 2011 date was tentative and subject to change due to Monsanto’s progress in collecting and reviewing these documents. The parties further agreed to revisit the issue as the deadline approached.

Upon Monsanto’s notification to defense counsel of its need for an additional two weeks to complete its review, however, counsel would agree only to a *one*-week extension. Counsel apparently did so because Monsanto recently declined to agree to an extension for Defendants’

response to Monsanto's motion concerning Defendants' privilege log, an extremely time-sensitive matter. Monsanto has otherwise agreed to every time extension sought by Defendants. Thus, because Monsanto declined to agree to *one* extension concerning a time-sensitive issue, Defendants apparently deem it necessary to decline to agree to a full extension here, where the need for additional time had been contemplated by the parties all along.

To be clear, although Monsanto has worked diligently to complete its collection and review efforts, Monsanto cannot complete its production in only one week. As with Monsanto's initial production, considerable time has been required in collecting and reviewing documents responsive to Defendants' three different sets of document requests totaling 192 separate requests. While this review only implicates files collected from five additional custodians, Monsanto conservatively estimates that some two-and-half million documents constituting some seven million pages were collected from these custodians' files. Monsanto then ran the agreed-upon search terms to reduce this population, but Monsanto was still left to review over two hundred thousand documents constituting a conservatively-estimated three million pages. In addition to the extensive time spent by Monsanto's outside counsel, Monsanto has hired and re-trained a large number of contract attorneys who have worked full-time on completing the review. Accordingly, despite its better efforts, Monsanto will not be able to meet the current document production date of June 3, 2011, but can finish its production in two weeks time.¹

The requested extension of two weeks is reasonable due to the complex nature of discovery in this case. Fact discovery for the non-stayed antitrust claims does not close until November, and the schedule for the patent and contract claims will not be materially affected by

¹ Defendants represent to Monsanto that they are prepared to produce all of the documents they collected and reviewed from the additional custodians named by Monsanto. Of course, Defendants also represented in November of 2010 that they had finished their initial production of documents, only to continue with wave after wave of "supplemental" productions all the way through the present.

an extension of two weeks. Thus, this extension will permit Monsanto to complete its review without impacting the scheduling order in this matter or prejudicing Defendants.

Counsel for Monsanto agree to a similar extension for Defendants' production of documents if needed.

Dated: June 3, 2011

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ Joseph P. Conran.
Joseph P. Conran, E.D.Mo. # 21635MO
joe.conran@huschblackwell.com
Omri E. Praiss, E.D.Mo. # 41850MO
omri.praiss@huschblackwell.com
Greg G. Gutzler, E.D.Mo. # 48893MO
greg.gutzler@huschblackwell.com
Tamara M. Spicer, E.D.Mo. # 54037MO
tamara.spicer@huschblackwell.com
Steven M. Berezney, E.D.Mo. # 56091MO
steve.berezney@huschblackwell.com
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500 – telephone
(314) 480-1505 – facsimile

WINSTON & STRAWN LLP

Dan K. Webb
dwebb@winston.com
George C. Lombardi
glombardi@winston.com
Todd J. Ehlman
tehlman@winston.com
James M. Hilmert
jhilmert@winston.com
35 W. Wacker Drive, Suite 4200
Chicago, IL 60601
(312) 558-5600 – telephone
(312) 558-5700 – facsimile

John J. Rosenthal
jrosenthal@winston.com
Matthew A. Campbell
macampbell@winston.com
Jovial Wong
jwong@winston.com
1700 K Street, N.W.
Washington, DC 20006
(202) 282-5000 – telephone
(202) 282-5100 – facsimile

Gail J. Standish
gstandish@winston.com
333 South Grand Avenue
Los Angeles, CA 90071-1543
(213) 615-1700 – telephone
(213) 615-1750 – facsimile

MCDERMOTT WILL & EMERY
Steven G. Spears
sspears@mwe.com
1000 Louisiana Street, Suite 3900
Houston, TX 77002-5005
(713) 653-1700 – telephone
(713) 739-7592 – facsimile
*Attorneys for Plaintiff Monsanto Company and
Monsanto Technology LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed electronically with the Clerk of Court and served by operation of the Court's ECF System to all attorneys of record as indicated, this the 3rd day of June, 2011:

Andrew Rothschild, Esq.
C. David Goerisch, Esq.
Lewis, Rice & Fingersh, L.C.
600 Washington, Suite 2500
St. Louis, MO 63102

Leora Ben-Ami, Esq.
Thomas F. Fleming, Esq.
Christopher T. Jagoe, Esq.
Howard S. Suh, Esq.
Jeanna Wacker, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Donald L. Flexner, Esq.
Hershel Wancjer, Esq.
Cynthia Christian, Esq.
Robert M. Cooper, Esq.
Boies, Schiller & Flexner LLP
575 Lexington Avenue, 7th Fl.
New York, NY 10022

James P. Denvir, Esq.
Amy J. Mauser, Esq.
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015

Attorneys for Defendants

/s/ Joseph P. Conran .